

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2015

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THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 220 of 2015

&

M.P. No. 1 of 2015

M/s. New India Assurance Co. Ltd.,
Door No.17, II Floor, Fort Main Road,
Shevapet, Salem - 636 002. ...Appellant/2nd Respondent

Vs.

1. Thiru N.S. Krishnan ...1st Respondent/Claimant
2. The Chairman,
M/s. Muthayammal Engineering College,
Kakkaveri Post, Rasipuram Taluk,
Namakkal District. ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 02.07.2014 passed in M.C.O.P. No. 2278 of 2010 by the Motor Accidents Claims Tribunal (Special Subordinate Judge), Salem District.

For Appellant : Mr.J. Chandran

सत्यमेव जयते
J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the fastening of liability as well as the award of Rs.6,40,000/- in favour of the 1st respondent, an agriculturist, aged about 50 years, earning about Rs.20,000/- per month, who sustained 46% permanent disability in the accident, which occurred on 22.09.2010, when he was hit by a bus, insured with the appellant, while walking on an overbridge.

2. Heard Mr.J. Chandran, learned counsel for the appellant, who would submit that the 1st respondent/claimant himself invited the accident as he did not walk on the platform and walked on the road. Therefore, according to the learned counsel, the liability should not have been fastened on the appellant.

3. However, such a stand taken has been rejected by the Tribunal stating that P.W.1 denied the existence of platform in the overbridge. It is further fortified by the statement made in EX-P1, FIR. In the absence of platform, P.W.1 could have walked only on the margin of the road. The driver of the bus was rash and negligent and hence, responsible for the accident.

4. Though R.W.1, an official of the Insurance Company, was examined, he was not an eye-witness. That apart, criminal case was filed as

against the driver of the bus taking note of the absence of width of the platform; relying upon P.W.1's evidence and non-examination of driver of the bus, the Tribunal rejected the contention of the appellant and held that the driver of the bus was responsible for the accident and rightly fixed the liability on the appellant. The said finding cannot be disturbed and the same is confirmed.

5. As far as quantum is concerned, the claimant sustained crush injury on right leg, injury on left ankle and abrasion on left elbow. He underwent treatment in two spells. As per Ex-P3, Discharge Summary, the claimant underwent surgery and wound debridement, external fixation, Necrosectomy, muscle flap and SSG were done. In the first spell, he was admitted as an in-patient from 22.09.2010 to 04.11.2010, for about one and a half month. In the second speall, he was treated for gap non-union right tibia with bone grafting for which he was admitted from 30.12.2010 to 05.1.2011. The Tribunal, after examining Ex-P8, photographs, observed that the injury sustained by the claimant/ 1st respondent is gruesome in nature and noted that his right leg was twisted and shapeless, when he appeared for giving evidence. P.W.2, Doctor, assessed the disability at 46% as per Ex-X1, Disability Certificate and Ex-P11, Wound Certificate. However, the Tribunal, considering the submissions on either side and the evidence on record, following the guidelines issued by the Ministry of Social Justice, Government of India, fixed the disability at 40%.

6. Since the accident occurred on 22.09.2010, even in the absence of any proof regarding income, the Tribunal fixed the monthly

income of the 1st respondent as Rs.4500/- even though the claimant claimed that his monthly income was Rs.20,000/-. The Tribunal did not award any hike towards "Future Prospects" and adopted multiplier 13, as per the age of the claimant and calculated "Loss of Earning due to Disability" as Rs.2,80,800/- (Rs.4500 x 12 x 13 x 40/100), which is reasonable and therefore, confirmed. The other amounts, namely, Rs.30,000/- awarded towards "Pain and Suffering"; Rs.50,000/- towards "Attendant charges"; Rs.2,48,000/- towards "Medical Expenses" and Rs.1200/- towards "Transportation Charges" are all reasonable and they are confirmed. The sum of Rs.25,000/- towards "Shock and Mental Agony" is deleted as it amounts to double payment. Further, Rs.5000/- towards "Food and Extra Nourishment" is too low and the same is enhanced to Rs. 30,000/-. Except the above modification, there is no occasion for this Court to interfere with the award passed by the Tribunal. Hence, the appeal fails and the same is dismissed. No costs. Connected M.P. is closed.

7. The appellant Insurance Company is directed to deposit the entire award amount, with accrued interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant/1st respondent is permitted to withdraw the entire amount within a period of one week thereafter.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nv

To

The Motor Accident Claims Tribunal,
(Special Subordinate Judge)
Salem,

1 CC to Mr.J. Chandran, Advocate SR.No. 6484

Copy to

Mr.N.S. Krishnan,
S/o. Sellamuthu,
Adi-Draavidar Street,
Navakkurichi,
Thalaivasal (Via),
Attur Taluk,
Salem District.

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SV (CO)
PSI (05.03.2015)



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